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SPEECH

OF

MR. CUSHING, OF MASSACHUSETTS,

ON THE CASE OF

ALEXANDER McLEOD.

DELIVERED IN

THE HOUSE OF REPRESENTATIVES,

JUNE 24 AND 25, 1841.

WASHINGTON:

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SPEECH

The following resolution, offered by Mr. FLOYD, being under consideration :

"Resolved, That the President of the United States be requested to inform this House, if not incompatible with the public interest, whether any officer of the Army, or the Attorney General of the United States, has, since the 4th of March last, been directed to visit the State of New York for any purpose connected with the imprisonment or trial of Alexander McLeod, and whether, by any Executive measures or correspondence, the British Government has been given to understand that Mr. McLeod will be released or surrendered, and, if so, to communicate to this House copies of the instructions to, and report of, such officer :—"

Mr. CUSHING addressed the House as follows :

Mr. SPEAKER : It is customary to make public, from time to time, the negotiations between our own and other Governments ; and those negotiations become the subject of public debate in the two Houses of Congress. This publicity of all the acts of our Government is one among its fundamental principles and its greatest blessings. God forbid that I should, on this or on any other occasion, seek to prevent examination of national measures, whether they relate to the domestic affairs or to the foreign relations of the country. But while this feature of our institutions is of their very essence, while it is indispensable to our national liberties, it of necessity involves an inconvenience ; and I state it as an inconvenience merely, and which it is our duty frankly to accept, and to accommodate ourselves to, as but a slight drawback on the blessings of civil liberty which characterize the United States. I allude to the impolitic introduction into the debate of matters which, consulting the public interest only, it would have been better to omit ; such as we have seen to-day in this House, and of which improper course of proceeding the speech of the gentleman from Pennsylvania (Mr. INGERSOLL) affords an illustration.

What is the attitude which that gentleman assumes ? Whilst disclaiming party purposes, and claiming, as he does, to love peace for itself, and professing, as he does, that peace is for the best interests of our country, at what time and in what manner does he raise this discussion before the House ?

In a domestic point of view, look, in the first place, at the fact that these grave questions are thrown into the arena of this House, to be made the foot-ball of party concussion here, when, at this moment, they are under the advisement of the courts of the State of New York. Yes ! these the gravest judicial questions, perhaps, ever discussed or adjudged in this country, are now being weighed in the breasts of those judges who are shortly to give their decision in the premises ; and yet, at such a moment, they are to be debated here, as a matter of fault-finding with the administration of our Government.

Look, in the second place, at the immense importance of the subject, not in its domestic only, but also in its foreign relations. Is this a question of diplomacy settled ? Is it not a pending question ? And is there not a probability that what is said in this House may disturb and obstruct the proper settlement of it ? The gentleman from Pennsylvania avows and admits that a protracted and bloody war may result from the present state of things ; and that, if crimination and recrimination are to be indulged in, it would have the effect of inflaming the popular mind, and thus end in shedding the blood of the kindred nations of Britain and America. Notwithstanding which view of things, the gentleman from Pennsylvania has delivered, not on a sudden impulse, but by premeditation and study, an elaborate speech of complaint against the foreign policy of the Government.

And I could not but marvel to perceive that he is not content to question the principles of law, international or municipal, as received by the Secretary of State. He has not deemed it enough to argue that the course of the Government is impolitic and unwise. He is not satisfied with questioning, by insinuation at least, the

patriotism of the Secretary of State, and placing William Henry Harrison and John Tyler on one side, and Daniel Webster on the other, in this matter. But he condescends to criticise, in the style of a literary review, the language of the Secretary's despatch. And what is the fault found with that language? Why, forsooth, it is to be condemned because of its alleged eloquence. That is to say, the very matchless power of language brought to the defence of the United States, by the Secretary, is perversely seized upon, to be the subject of reproach.

I put it to the candor of the gentleman from Pennsylvania to say whether this kind of criticism be not disingenuous. I am aware that there is an established language of diplomacy—dignified, exact, formal, somewhat general and reserved in its style, and alien to rhetorical ornament. If, in speaking of the beauty of language of this despatch, of its tropes and figures, the gentleman means to say there is any thing undiplomatic, any thing of unmanly or effeminate elegance, I totally deny the justice of his criticism. Nothing in that letter can exceed the precision and strength of the language, drawn from the purest wells of undefiled English,—nothing can exceed the manly vigor of its tone and diction, except the beauty of thought and patriotism of principle which kindle in every sentence. How could the gentleman from Pennsylvania shut his eyes to this? How could he deaden himself to all perception of the spirit of patriotism which runs through every line of that despatch? How, stopping to complain of the excellence of the language, could he keep himself insensible to the nobleness of the thought of those passages of the despatch which, though censured by him, have been received with the most enthusiastic applause by almost the universal People of the United States?

Whatever might be said of the precise, narrow, naked question, whether the instructions to Mr. Crittenden should or should not have been written; whatever might be said of the equally narrow questions of international law involved in the demand for the release of McLeod, the last thing I dreamed to hear in the Congress of the United States was this elaboration of minute criticism on the language of that despatch, and of such criticism redeemed by no recognition of the patriotism of principle which distinguishes it. Is not this unjustifiable as well as extraordinary?

But I have dwelt longer than I had intended on this point; and I would not have touched it at all, but for the indication it affords of the spirit of fault-finding which characterizes the remarks of the gentleman from Pennsylvania.

It is easy to find fault with a public despatch—to take it, paragraph by paragraph, and say this or that idea might have been expressed otherwise; that Mr. Madison or Mr. Monroe, on a similar occasion, might have used different language. It is easy for an acute, ingenious, practised lawyer to find fault with the language, the law, and the diplomacy of the despatch; but it is novel to complain of one because of the pre-eminent merit of its composition.

There is another remarkable thing which appears on the very surface of the speech of the gentleman from Pennsylvania. The point from which he starts, and at which he closes, the idea which he again and again presents to the mind is, that in this despatch are contained the seeds of war between the United States and Great Britain. Now I, for one, deprecate a war between the United States and any Government, and most of all between the United States and England; but in deprecating this I declare, as I have again and again done before, that I would cavil with England to the thousandth division of a hair, on any question of the rights or honor of the United States. And I would do so not only because she is our competitor on the seas, not only because she has colonies conterminous with our country, but for the very cause that she is great, strong, and powerful, and the worthier to be the antagonist of the United States; and for these reasons I would meet her with the spirit, and zeal, and feelings which become the descendants of the men of the Revolution.

When I look around me to inquire from what quarter these remarks come, calling in question the patriotism and spirit of the foreign policy of the present Administration, I am astonished to see that they proceed from a friend of the last Administration and opponent of the present.

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[Mr. INGERSOLL was here understood to intimate some dissent from the latter part of the proposition.]

Mr. CUSHING continued. Well, the present Administration deserves the support of every good man in the country. But, at any rate, the remarks come from a friend of the last Administration. Yes! it is a friend of the last Administration who imputes to the present a want of due spirit towards Great Britain, and cavils at what he tauntingly calls the *coup d'essai* of a new foreign Secretary entering into office, unlike (I believe the gentleman said) all his predecessors, without the advantage of previous training in diplomacy. And upon these points I have something to say to the friends of the last Administration, and (whether the two things be identical or not) the members of the present Opposition.

Was the last Administration distinguished for its zeal in this particular thing? Did it prosecute with spirit the claim of the United States against Great Britain for reparation on account of the destruction of the Caroline? Did it not, on the contrary, allow that claim to slumber for three years? And, for aught that appears, Mr. Van Buren would have allowed it to slumber to the end of time, if the incidental question involved in McLeod's arrest had not arisen, and, by converting England into the claimant party, thus compelled him to resume the discussion of the case of the Caroline.

Nay, more, the gentleman from Pennsylvania has entertained us with what seems to me to be very captious comments on this *coup d'essai* of Mr. Webster in diplomacy. He is quite mistaken in saying that Mr. Webster is the *first Secretary of State*, by many, who had had no previous diplomatic experience. To say nothing of others, what diplomatic training was possessed by the *first Secretary of State under General Jackson*? And when the gentleman from Pennsylvania is considering the first great negotiation of Mr. Webster, how does he happen to forget the famous, or rather infamous, first great negotiation undertaken by Mr. Van Buren? And is it not an act of mere madness, on the part of the friends of Mr. Van Buren, to compel us to compare the two? Here is a despatch before us addressed in a controversy between the United States and Great Britain, containing one of the ablest vindications of the honor and integrity of the United States that ever was written. Mr. Van Buren began, also, with the discussion of a question between us and Great Britain. And in what spirit?—that of a patriot, a man of honor, and an American? Is not that despatch, on the contrary, a monument of ignominy in the history of the United States? Instead of maintaining the interests of this country, did not Mr. Van Buren, on that occasion, utterly sacrifice them? Did he not dictate, in that despatch, a disposition of the great question of the colony trade between the United States and Great Britain, which, from that time to this, has proved most disastrous in its effects on the commercial and navigating interests of the United States? And pernicious as was the object of the despatch, was not the *spirit* of it infinitely worse? In which, for the first time, party quarrels of the People of the United States were carried into our foreign affairs—in which a preceding Administration was impliedly reproached for the zeal with which it had defended our interests—in which it was proclaimed that the new Administration started in the world with a set purpose of *concession* towards Britain—in which the honor of the United States was laid prostrate at the foot of the British throne, and the proud name of America, to sustain which our fathers had carried on a first and a second war, as we may have to do a third—that glory which the arms of our enemy could not reach, was, in this truckling despatch, laid low for the first, and, I trust in God, the last time, before the lion of England.

Nor was that despatch a solitary act—it was the true index of the purposes which, under the inspiration of Mr. Van Buren, characterized the policy of the last Administration toward Great Britain. For a long series of years, prior to 1829, my colleague, (Mr. ADAMS,) either as Secretary of State or as President, had conducted the foreign negotiations of this Government. He was not the man to sacrifice our interests. No right of the United States was ever impaired or lost in his hands. But the moment he was driven from power, a change came over the foreign

policy of the country. That claim of the United States to commercial reciprocity with England and her colonies, which he had strenuously maintained, was abandoned at once. The title of the United States to the possession of the vast region watered by the river Columbia, which he had defended, was left to its fate, and for the twelve years that ensued under the last Administration not a despatch or a word was addressed to England on the subject. Mr. Adams had been pursuing the rights of the United States, also, on the long line of disputed boundary, from the Neebish rapids, at the foot of Lake Superior, north and west to the Rocky mountains. But that question, also, Mr. Van Buren and his party allowed to go to sleep for ten years, until they were driven to take it up by a resolution which I offered in this House. And then, worst of all, the series of blunders and concessions made during the last twelve years in the question of the Northeastern boundary—it having taken one-half of that time to raise up the question, by discussion in Congress and otherwise, from the point of depression to which it had been sunk during the other half of it by the impolicy and improvidence of the then Administration; which had too much to do of petty party warfare to give due attention to higher and more national interests. And I might refer to other great questions which mark, in the same way, the spirit of *concession* towards England in all things, which pervaded the foreign policy of the last Administration; the friends of which come, at length, to be seized with a spasm of patriotism in this matter just when they begin to be an Opposition.

And now let me address a single consideration to the members of the Opposition, whether friends or not of the last Administration, in reference to the party tactics they seem disposed to pursue on the questions pending between the United States and Great Britain. It is impossible not to observe the course this thing is about to take. Whether we read the newspapers of the Opposition or observe the discussions in Congress, it is alike apparent that they are undertaking to stimulate a war feeling in the United States in the hope of thus injuring the present Administration. I am aware that there exists throughout the United States at the present time a vivid jealousy of the all-encroaching, the rapacious, and the mercenary spirit of the foreign policy of England. I am not unconscious that the idea is daily gaining ground of an approaching necessity on the part of the United States to withstand the aggressive conduct of England at the hazard of the not improbable event of ultimate war; and I do not regret that the People of the United States are thus vigilant in relation to the acts of the only European Power in contact with the United States. But I do most deeply regret to see that party spirit is seeking to possess itself, for sinister purposes, of the patriotic feeling of the country; and I say to the Opposition that if they think to make any thing of this, in a party point of view, they will find themselves deplorably mistaken. Gentlemen of the Opposition! will you undertake, by speeches here impeaching the patriotism of the Administration in its management of our relations with England, to stimulate and madden the People of the United States into a war fever against England? I say to you, do this if you dare! Do it at your peril! For in whose control are the issues of war and peace? In yours or in ours? Is it not we who, if we hold in one hand the olive branch of peace, yet grasp in the other the thunderbolt of war, to be hurled by us against the enemies of our country, whensoever the time for action shall arrive? Is it not the Government of the United States which, like the old Roman ambassador, may at its will shake forth from its robes the tempest of war, or diffuse through the land the tranquil influences of peace? You may, if you choose, drive the country into a war, and the moment you do so, you render this Administration permanent and all-powerful, and convert yourselves into a wretched, humble, insignificant faction, instead of continuing to be a constitutional Opposition. You would be, in such an event, forced by the necessities of the case—you would be impelled, by your own patriotism, to support the Government of your country, and by such a course of opposition you would do more, than by all other causes combined, to strengthen and consolidate the present Administration, and to fix it in the favor and support of the People of the United States.

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Having disposed of these incidental questions, I propose next to discuss the merits of the controversy.

[Mr. MORGAN, of New York, suggesting that it wanting but a few minutes of the hour of adjournment, on his motion, the House adjourned.]

FRIDAY, JUNE 25, 1841.

The House resuming the consideration of the resolution of Mr. FLOYD, in continuation of the debate of yesterday, Mr. CUSHING said:

In the hasty remarks on this subject, which I submitted to the House yesterday, I commented on the general spirit of the speech of the gentleman from Pennsylvania, (Mr. INGERSOLL,) and on sundry incidental topics introduced into the speech of that gentleman. I reviewed also the foreign policy of Mr. Van Buren, more especially in relation to Great Britain, beginning with the notorious instructions of Mr. Van Buren to Mr. McLane, his first great act as Secretary of State, and tracing the subject down to the close of his administration as President of the United States. I endeavored also to exhibit to the House the *party consequences* to the present Opposition of an attempt, on their part, to stimulate the war feeling of the People of the United States, and showed that any such attempt could not but operate eventually to consolidate the power of the present Administration, in whose hands the issue of war or peace must, of necessity, rest. I now propose to discuss the *merits* of the question before the House.

When I thus speak of the merits, I do not mean the merits of the case of Alexander McLeod, but the merits of the discussion pending, and of the concerted attack on the foreign policy of the Administration undertaken by the Opposition in both Houses of Congress. I shall avoid to-day, as I did yesterday, the points debated in the Senate. It would be idle for me to reargue the particular things which have been discussed there so fully, ably, and triumphantly by eminent Senators. To do so would be

"To gild refined gold, to paint the lily,
Or add a perfume to the violet."

Nor do I stand here now to make apologies for the foreign Department of the American Government, or merely to defend the acts of the Secretary of State. My purpose, on the contrary, is to attack the course of the Opposition in this matter, and to show that, if not the object, yet the tendency and end of their course is to substitute for the true issue between the United States and Great Britain a false one; to play into the hands of England; to force the Government of the United States, if they may, to abandon the impregnable fortress of right, and to drive the country to the edge of a precipice, over which, if the nation should fall, it would, like the rebel angels in Milton, be hurled down, as it were, from the heaven of its present lofty position into the bottomless abyss of error and disaster. This, I say, is the tendency and inevitable result of the arguments of the Opposition, as I will undertake to demonstrate.

The question involved in the case of McLeod is a secondary and incidental one—incidental to the main question of the attack on the Caroline. To appreciate the true position of the United States in the whole matter, therefore, it is necessary to go back to the original fact.

What was that fact? Insurrection and civil war existed in the British Province of Upper Canada, conterminous with the territory of the United States. That insurrection had its root in causes which appealed irresistibly to the sympathies of the People of the United States, to their revolutionary recollections, and to their innate love of liberty. It was a question of colonial independence, of republican feeling, of love for liberty, and of the right of self-government. It was impossible for the People of the United States not to sympathize with the insurgent party in such a case. To do so was no fault of theirs, but, on the contrary, a merit. If any disorders occurred on our side of the line, for those disorders Great Britain, not the United States, was responsible. Great Britain was responsible for all the unavoidable consequences of her own misgovernment of her own Colony, for the agitation

which that misgovernment gave rise to on our side of the line as well as hers; for it was the ordinary case of two neighbors occupying parts of the same house, in which, if one of the co-tenants sets fire to his part of the house, either by carelessness or by malice, it is his fault which involves the other in the common calamity. That individual citizens of the United States on the frontier should be disposed to aid the insurgent Canadians was the natural and necessary fact; but the Government of the United States exerted itself, and exerted itself efficiently, to restrain its citizens, as the English Government itself has again and again avowed in the strongest terms. Nay, it was owing to the strict observance of neutrality, on the part of the United States, that the Canadas were not, at that time, lost to Great Britain.

The United States, in this respect, are above reproach, and least of all can Great Britain make our conduct a subject of accusation. England has, at all times, permitted, and frequently encouraged, her subjects to enlist, not by individuals only, but by whole battalions, in the civil wars of other nations, whenever it was, or she the imagined it was, for her interest. No commotion can exist in any part of the world, in Europe, Asia, Africa, or America, into which she does not thrust herself as a government, or allow her subjects to intervene. The spirit of universal intermeddling is characteristic of her whole foreign policy. The United States, on the contrary, take a higher and nobler view of their duty as a government. They do not allow themselves to inquire what is for their interest; they do not found their foreign policy upon sordid considerations; they do not undertake basely to prevaricate in international questions, by pretending to be neutral as a government, while their people are let loose as individuals, to organize war against a foreign Power. They adopt, as the spirit of their foreign policy, the same principle which animates their domestic institutions, viz: the assertion and maintenance of moral right, as the only true guide for the conduct of nations as well as men. For the safeguard of their own honor as a nation, for the love of the eternal principles of right, the United States have, by a long system of legislation, established a public policy of neutrality, national and individual, in their foreign relations. In this we have set the example to the world—an example which England herself, in her own legislation on the subject, has been emulous, in profession at least, to follow. And when the troubles in Canada broke out, the Federal Government interposed in good faith to check, and, so far as possible, prevent, all interference therein on the part of the people of the United States. Great Britain, on the other hand, at nearly the same period of time, exhibited the spectacle of allowing whole regiments of her subjects to enlist, arm, and equip themselves, in her own ports, for the purpose of engaging as mercenaries in the civil wars of Spain and Portugal. Nay, a member of Parliament took the command of a British legion engaged in the civil war in Spain, attended in his place in the House of Commons in the intervals of his campaigns, and has been knighted by the English Government in recompense of his services in that war. A multitude of other conspicuous examples might be cited; in confirmation of which is the fact that when, in the year 1819, the English Government procured the passage of an act to prevent enlistments in the service of the Spanish colonies against Spain, that act was opposed by many of the most eminent men in England, and in part by the same men now in power there, as being a departure from the ancient and long continued policy of England, which, without any admitted breach of its neutrality, had furnished supplies, munitions of war, and men, for one party or the other, in half the civil wars of Europe.

I repeat, therefore, that, in the general matter of the troubles in Canada, the conduct of the United States was altogether above reproach, at least so far as it regarded Great Britain. And it was under these circumstances, and notwithstanding the high-minded, neutral policy of the United States, that the attack on the Caroline took place. And, therefore, unless there was something in the particular circumstances of the case of the Caroline to take it out of the general principles of national right, that attack was wholly unjustifiable, and confers on the United States an indisputable claim on Great Britain for redress.

Was there any thing in those circumstances to constitute such an exception?

There is but one solitary ground upon which any such pretence of exception can be put, or in any of the books on international law is put—and that is, absolute necessity. There was no such necessity in this case. If McNab desired to destroy the Caroline as, in the absurd and ridiculous language of the English Government, a piratical vessel, he could have done so when she crossed over to the English side, and was in the act of transporting persons or munitions of war, if she did so, to Navy Island. But he made the attack on her as she lay peaceably moored to the wharf at Schlosser. He had not even the excuse of entering the territory of the United States in the hot pursuit of a vessel caught in the performance of any act injurious to his Government. His invasion of the territory of the United States was cowardly, thief-like, wanton, gratuitous, and unjustifiable. Doing this in pursuance of the orders of his Government, or doing it of his own head, and the act having subsequently been assumed and justified by his Government, what he did constituted an act of war against the United States. I say an *act of war*; for there may be an act of war without there existing any state of continuous or declared warfare. And the Government of the United States, in claiming reparation of Great Britain immediately afterwards, made that claim on the ground that what had been done, if avowed or assumed by the British Government, constituted an act of war, as I shall show hereafter by the production of the despatch on that subject, addressed by Mr. Stevenson to Lord Palmerston. And I assume as the premises *f all that I shall have to say concerning the case of McLeod, that, in the precise matter of the Caroline, the United States possess such a clear and manifest right of redress against Great Britain, for hostile invasion of the territory of the United States, that, if the controversy should end in war, the United States may confidently appeal to the judgment of men and of nations, and of the just God who overrules all, for our vindication in respect of whatever calamity and bloodshed might ensue. Our position in this matter, if we do not stupidly and madly abandon it, is a strong, unshakeable, and impregnable one.*

And it is in this point of view that I object to the course of the gentleman from Pennsylvania. I doubt not the English Government would be very glad, for the great and true issue in the case of the Caroline, to substitute the petty and the false one of McLeod; for that issue in which the judgment and sympathies of the whole world would be on our side, to raise up a new one, where that judgment and those sympathies would of necessity be on the side of England. And I charge upon the gentleman from Pennsylvania—I accuse him and those who act with him—I arraign them before the people of the United States—I hold them responsible to the country, for allowing themselves to become the blind instruments of England, against the interest and honor of the Government and People of the United States. I hold them to all present and future responsibility for whatever mischief may come, if, by the course they are pursuing, they force the United States from the dignity and majesty of the position we now occupy in this matter, and compel us to relinquish our own triumphant issue, to adopt that which England would fain present to us, for her advantage and our disgrace.

But this is not all. The question of the Caroline is not the only one pending between England and the United States. There are many others; in all which, as in that of the Caroline, the United States are the aggrieved and complainant party, and on any of which the United States might, if occasion required, and no other means of redress existed, justifiably enter upon war with Great Britain.

In the first place, we have the old and long-pending questions of boundary—not merely that of the Northeastern boundary, but of two-thirds of the long line of frontier, extending from the mouth of Passamaquoddy bay, across the continent, to the shores of the Pacific ocean; the larger part of which is still wholly unsettled, and upon the line of which Great Britain is continually committing acts of gross aggression on the rights of the United States. For all these wrongs the day of judgment and redress must come; and in these great boundary questions England might well jump at the chance of interposing the case of McLeod, and complaint against us for wrong in that matter. Britain would willingly interpose this case between us

and our claims on her, if we have the folly to allow her to do so. I appeal to the members from the State of Maine, I appeal to those from the great Northwest, whether they will suffer themselves to be drawn into a position so false as this; and whether they are content to follow in the lead of the gentleman from Pennsylvania in this matter, and to become the instruments of Great Britain in the sacrifice of the rights of all the frontier States.

In the second place, go to the sea, and you find that in the vast career of ambition and conquest in which England is hurrying along to some great but inappreciable consummation, she is perpetually there, also, committing aggressions on the rights of the United States. Among these, are acts of the gravest and most threatening description. I do not allude to here and there a case of blockade operating injuriously upon our commerce. I do not speak merely of the innovation upon the law of nations which England is endeavoring to force upon us at the expense of our Southern States, in the reiterated cases of our shipwrecked slaves unlawfully taken from their masters by British officers in the West Indies, new instances of which have occurred within the last year. But I allude more particularly to the long series of insolent acts of search and seizure of our vessels perpetrated by English cruisers on the coast of Africa. Are gentlemen aware that these acts have already, within two years, been so fearfully multiplied that set representations of *twenty-four* such cases have already been formally brought by injured parties to the notice of the Department of State? And they constitute cases of wilful injury and public aggression, second only to those old acts of search which were among the primary causes of the last war with Great Britain. For when, subsequently to the Congress of Vienna, the English Government entered into negotiation with the great Powers of Europe and America, for the purpose of adopting concerted means of putting an end to the African slave trade, she proposed to us an arrangement for a reciprocal right of search on the coast of Africa. The object was a noble and a generous one—the termination of the slave trade. We were as anxious as she to extinguish that trade, as we have evinced by our legislation upon the subject. But our Government said to that of England, and said rightly: We cannot and we will not trust you in this matter; your conduct at sea in the wars of the French Revolution was so full of aggression and usurpation that we decline to entertain any proposition for placing in the hands of your cruisers a power so delicate and dangerous as that of searching our vessels, though for ever so good a purpose. And upon that precise point the negotiations were broken off and ceased. And the recent acts of search and seizure are not only violations of the immunity of our flag, under the law of nations, but they are aggravated by the consideration that they are the exercise of a right which England requested us to concede to her by treaty, and which we positively refused to concede. And it is important to observe that these outrages have been committed under authority of an act of Parliament, passed in 1839, against the remonstrance and protest of men the most pre-eminent, such as the Duke of Wellington, who warned Parliament that the act, if passed, would inevitably and almost instantly bring the English Government into collision with the United States, upon a point where the United States were, most of all, sensitive and prompt for war; that England would be liable to us for every detention of our vessels; and that, if there was one point more to be avoided than another, it was the detention and visitation of vessels belonging to the United States. Upon all these maritime questions the United States have stored up against England a great body of wrongs, amply sufficient to call for and to justify the interposition of the public force of the Union. Here, also, we have the right on our side. Here, also, our position is an impregnable one, so long as we choose to stand on it. And again, I appeal to every member of this House not to allow himself to be blinded by party spirit or misled by party associations, into allowing a false issue upon the case of McLeod to take the place of these, the true ones, in any possible war between us and Great Britain. When the shock comes, as come it well may, let us take care that, in addition to the strength and the spirit enlisted on our side of the struggle, we may also have the *right*, remembering that,

"Thrice is he armed who hath his quarrel just."

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I might stop here and content myself with exhibiting what I conceive to be the impolitic, misguided, and pernicious tendency and effect of the course of the gentleman from Pennsylvania (Mr. INGERSOLL) and his friends in this matter. But in justice to the gentleman from Pennsylvania, I ought, perhaps, to examine some of the principal of those lesser questions of diplomacy and law which he has discussed in his speech with so much of imposing air of conviction and truth.

The gentleman dwells emphatically upon the fact, and more than once, too, that the letter of Mr. Fox is dated almost immediately after the accession of the present Administration, insinuating that the British Government *selected* that precise time for making the demand. How is it possible that the gentleman should thus allow himself to contemplate things through an inverted telescope, and to see them in the little instead of the large? Does not the letter of Mr. Fox, upon the face of it, purport to be merely a *continuation* of the correspondence; not a demand then for the first time made at a selected season, but a demand *reiterated*, and bearing date at just such time as in the natural course of communication with and instruction from his own Government it naturally might do? This suggestion of the gentleman is very small game.

Next, the gentleman labors very much to show that the language in which Mr. Fox couches the demand is that of menace; that it is threatening language, and such as the American Government ought to have refused to answer, or to have made the subject of a counter-demand for explanation, in the spirit of private duelling, which is the illustration applied to the point in the discussion at the other end of the Capitol. The words are these:

"But, be that as it may, Her Majesty's Government formally demand, upon the grounds already stated, the immediate release of Mr. McLeod; and Her Majesty's Government entreat the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand."

There are two clauses, the first containing the words of simple demand, which are purely formal and technical, and such as are commonly used in such cases. The second contains intimation of possible consequences to follow a refusal to comply with the demand. And it is these expressions, I suppose, that gentlemen construe as a menace. Now it is observable that, in these very expressions, the *language* of Mr. Fox is that of *entreaty* expressly. He entreats our Government. But it may be said, this is courteous language, to cover a discourteous idea. Be it so, if you please; I have nothing to say in extenuation of the tone of England in her foreign diplomacy. It is too frequently characterized by that insolent island *morgue* which is ascribed to Englishmen. It may well be thought that Mr. Fox, in the language he has adopted, has trod upon the very verge of offence. But he has not passed that verge. It would savor of the petulance of a spoiled boy for our Government to fly into a passion at this act of imputed bad taste or ill manners of Mr. Fox. And I have the best possible reason to give to the gentlemen of the Opposition why they should not accuse Mr. Webster of a want of spirit in omitting to treat this intimation of consequences as a threat precluding respectful answer. For precisely the same idea, in almost the same language, was presented by Mr. Fox to Mr. Forsyth, in his letter of the 29th of December, when he before demanded the release of McLeod. The words are these:

"I cannot but foresee the *very grave and serious consequences that must ensue* if, besides the injury already inflicted upon Mr. McLeod, of a vexatious and unjust imprisonment, any further harm may be done him in the progress of this extraordinary proceeding."

And Mr. Webster, like Mr. Forsyth, while returning to this demand a refusal as peremptory as the demand itself, might well reflect that he best consulted the dignity of the American Government by not being over-anxious to cavil about words, or over-jealous to find in them matter of offence.

The gentleman from Pennsylvania proceeds to lament that Mr. Webster has, as he conceives, capitulated away the rights of the United States, by admitting and even anticipating Mr. Fox in the declaration that the attack on the Caroline was an act of war. In this complaint the gentleman forgets that Mr. Fox expressly de-

scribes the attack on the Caroline as an act of public force, and therefore it is untrue that Mr. Webster anticipates him in this idea. Then, does Mr. Webster err in acceding thus to the suggestion of Mr. Fox? Ought he to have denied the assumption? I reply, that he could not deny it. First, the attack on the Caroline, as the matter now stood, was, in point of fact, an act of war; and, therefore, to have asserted the contrary, would have been to assert a falsehood. Secondly, there is no title of claim in virtue of which the United States can demand reparation of England for the attack, except in treating it as a hostile act of the British Government. Thirdly, Mr. Webster was precluded, by the act of his predecessor, from taking any other ground. In treating it as an act of war, he did but continue in the sense of Mr. Van Buren's Administration, and follow the lights before him in the Department of State. For the gentleman from Pennsylvania and his friends have not only shut their eyes to the merits of the case, but they have forgotten its history.

It is strange enough that the friends of Mr. Van Buren should deny that the attack on the Caroline was an act of war. I reply to them, not only by exhibiting the reason and the principle of the thing, but by citing the authority of their own President. I hold in my hand a copy of the despatch addressed by Mr. Stevenson to Lord Palmerston, under the direction of Mr. Van Buren, making demand of reparation for the destruction of the Caroline; and in that despatch, which has been published, Mr. Stevenson pursues the only course he could pursue. He proceeds to prove the *hostile nature* of the act by a full exhibition of facts, and concludes and winds up the whole with declaring in these words: "The case, then, is one of open, undisguised, and unwarrantable *HOSTILITY*." After this, let no man complain of Mr. Webster for having put the case of the Caroline on the same precise ground which Mr. Van Buren had assumed for it, and which, indeed, is the only ground upon which the United States could undertake to hold the British Government responsible.

The gentleman from Pennsylvania would have the House believe that the Secretary of State, neglecting the authorities of the English law, goes for the guide of his opinions in the matter to the continental jurists and to countries where power is strong and right feeble. This is one of the numerous examples of small criticism, and of complaint by insinuation, in which the gentleman has indulged in the course of his speech. But in truth it is he and his friends, instead of Mr. Webster, who go to the jurists of the Continent in this matter. Upon what only legal authority do they controvert the positions of Mr. Webster? Is it not a passage in the Continental jurist, Vattel? Whilst it is the English jurist, Rutherford, who fully and emphatically sustains Mr. Webster. If in this question there be any who draw their opinions from the unregenerated principles of the European Continental law, any who drink at these poisoned sources, it is the friends of the gentleman from Pennsylvania.

The gentleman proceeds to deny all the legal positions of the Secretary, one by one. Whilst doing this, he seems to forget that the Secretary of State is not the law officer of the Government. The barbed shafts which he aims at Daniel Webster pass innocent by him; and if there be any venom on their points, they strike it into the bosom, not of the Secretary of State, but, Mr. Speaker, of your own brilliant and admirable representative in the Cabinet, John J. Crittenden, the Attorney General of the United States.

In the first place, the gentleman, if I understand him, denies that, in any event, jurisdiction in the case of McLeod could be transferred from the courts of the State of New York to those of the United States; and also denies that the Government of the United States would have the power to cause a *nolle prosequi* in the case to be entered here. I was surprised to hear such suggestions fall from the learned gentleman. I cannot pretend to the long legal experience of the gentleman from Pennsylvania, and I have some time since thrown off the robes of the bar; but I had supposed that there was one great statute in the books, which lay at the threshold of all legal knowledge in the United States; and that no man in this

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country could gain admission into the temple of Justice, as a minister there, without bearing that statute in his hand. I refer to the judiciary act of 1789, in the 25th section of which express provision is made for the transfer of precisely such cases as this from the courts of the States to those of the United States. And as to the power to enter a *nolle prosequi*, I appeal to any and every lawyer on this floor to say whether this power does not belong to the law officer of the Government, according to the established practice of every tribunal, high or low, throughout the United States. This the Attorney General might do, in such a case as the present, if he saw fit, not under dictation of the President, but as a member of his cabinet, and participating in his policy.

But, in the second place, the gentleman and his friends, while they seem to admit that upon the main point in controversy the principles of the Secretary of State, as developed in his letter to Mr. Fox, are substantially correct, yet fasten upon the letter of instructions to Mr. Crittenden as the great cause of complaint; they seem to admit that, so far as regards Great Britain, if the two letters had gone together, in point of date, they would have constituted the satisfactory answer to that Government, but that the letter to Mr. Crittenden, standing by itself, dated on the 15th of March, is a concession to England in fact, while the letter to Mr. Fox was but a denial of concession in form, and that the visit of Mr. Crittenden to New York was an act of interference with the tribunals of that State on the part of the Federal Government. I state these objections thus distinctly, because I have no wish to evade any thing in this matter; but am solicitous, on the contrary, to meet every thing face to face, openly and directly.

The demand of Mr. Fox is dated on the 12th of March, and the reply of Mr. Webster on the 24th of April. Is there any just reason to treat this as objectionable delay? No gentleman who reflects for a moment can, in candor and honor, so consider it. That period was crowded with important events in our domestic history, and devolved immense cares upon the ministers of the Government. First came the introduction of General Harrison to power; next, his calamitous death, which covered the land in mourning, and filled it with lamentation. Then the accession of the now President of the United States. In such a period it cannot be pretended that an elaborate reply to the letter of Mr. Fox, such as the circumstances required, should have been thrown off in the extemporaneous haste of a speech in this House. It was to be the starting point of the foreign policy of the new Administration, and was to be written, not for time only, but as it were for eternity. Its principles were to be deliberately meditated, and its language carefully composed. It was to be examined by the Executive, and on the change of that Executive to be re-examined by him who is to be responsible for the future action of the Government. It was to be prepared amidst all the harassing cares and toils attending the commencement of a new Administration; interrupted not only by a death in the family of the Secretary—of which I say nothing—but by the mortal sickness of the President of the United States. No man who recalls to mind all this, can impute delay in the matter to the Department of State, especially as there was nothing to render it necessary to give an instant answer to the demand of the British Government.

But whilst explanation and justification on the part of our Government might well wait for a convenient time, its action could not wait. *That* was hurried on by the progress of events. On the 22d of March, only ten days after the date of Mr. Fox's demand, McLeod stood for trial at Lockport, in the western extremity of the State of New York; and upon the issue of that trial, it might be, depended the question of peace or war between Great Britain and the United States. Under what influences and in whose hands that trial might be, the Government knew not. It did in these circumstances what the safeguard of the honor of the nation imperiously demanded. It despatched an agent of its own, not to interfere with the course of justice in New York—for that Mr. Crittenden neither did nor was instructed to do—but only to be on the spot, ready to act in behalf of the United States, on the

occurrence of any one of the several contingencies which might render such action wise, constitutional, and necessary. And the instructions to Mr. Crittenden were, at the time, nothing but an act of the members of the Government between themselves, in which England had no part.

Mr. Speaker, I repeat that neither in purpose nor in fact did the Government of the United States on this occasion touch the sovereign rights of the State of New York. Like the gentleman from Georgia, (Mr. ALFORD,) I would have the rights of that State in this matter to be held not only sacred, but *sacro-sanct*. I repose entire confidence in the integrity of her courts. I believe they will deal wisely and justly in this matter; that they will administer the law in truth and in honor; and that they will take into their consideration not only the municipal law of which the gentleman from Pennsylvania has had so much to say, but the law of nations also, which is as much the law of the State of New York as it is that of the United States.

If that gentleman is to be believed, Mr. Webster has lost a great chance, as it is called, to grapple with England at a time when her arms were diffused over the world, and she was unable to cope with us to advantage. Sir, it is not the policy of the Government of the United States to go about grasping at advantages to do wrong. Her march is along the luminous path of justice and of honor. To England be that of grasping ambition, of outreaching rapacity, and of wrong, as wide as the all but boundless range of her empire. Us, however, she must not assail with impunity. And, that we may be able to meet her in the righteousness of a good cause, let us take care that in this thing no taint or blemish rests on the spotless ermine of our honor. Let us beware not to be diverted into the false issue of the case of McLeod, as viewed by the Opposition; but let us continue to stand upon the lofty elevation of truth and justice, where, like the knights in the old times of chivalry, we may abide, lance in rest, to defy the attacks of all challengers, confident in reliance upon our own good right, and the just judgment of God. This, and not the mercenary pursuit of great chances, is the principle which animates the present Administration in its conduct towards England.

It is more than once insinuated by the gentleman from Pennsylvania, that in this negotiation the Secretary of State has one set of motives, whilst not only the deceased President of the United States, but the present President also, have had different ones; and passages of patriotic declarations from the inaugural addresses of Gen. Harrison and Mr. Tyler are cited to this end. Let not the gentleman lay this flatteringunction to his soul. I can assure him that, as well under the late Executive as the present, the Administration has been animated in all its parts, by the same unanimous spirit of anxiety to preserve the peace of the United States, if it may be done with honor, and to resolve, at all hazards, to suffer no wrong on the part of England or any other Power to go unredressed.

Sir, it remains only that I briefly touch one other subject in conclusion of the remarks which I had contemplated submitting to the House. The gentleman from Pennsylvania puts to us, very emphatically, the supposed dilemma in which the United States would be involved either way: whether the Supreme Court of New York shall overrule the plea of McLeod, and send him to his trial at bar, or whether, on the other hand, that court shall decide on the surrender of McLeod. I have said already, and I repeat, that I will not re-argue at length that part of this case which has been discussed in the Senate, and I touch upon it now only so far as may be requisite to the completeness of my reply to the gentleman from Pennsylvania. I could not but be amused to hear that gentleman lamenting, with such interesting sadness, the omission of Mr. Webster to copy the language of Mr. Monroe, in the message quoted by him, (or rather of Mr. Adams, whose words they were,) in making statement of the principles which guide the foreign policy of the United States. Now it so happens that, in the most important and material part of his letter to Mr. Fox, Mr. Webster, solicitous to be right, and to be right in accordance with those principles of our foreign policy which time and authority have sanctified, does follow the precise language of one of the most celebrated of the

state papers of Mr. Monroe. But let that pass. The question is, whether the United States are involved in any dilemma which human forecast could have prevented.

Mr. Fox demands the immediate release of McLeod; to this Mr. Webster replies that that it is impossible; McLeod is in the hands of the law, and by that law only can he be discharged. It is not for the United States to loose his bonds by any summary interposition on their part. His arrest, imprisonment, and trial, must take their course in the courts of the State of New York or (in certain contingencies) of the United States. The United States are a Government of constitutional and limited power; and it is perfectly well understood at the present day, as a point of international law, that constitutional governments cannot and will not interpose, arbitrarily to change the course of municipal justice, for the satisfaction of any grievance, real or supposed, of a foreign Power. This principle has been recognised by England herself, in a most celebrated case. In the reign of Queen Anne the Czar Peter, of Muscovy, being aggrieved by an injury done in England to his ambassador, Andrew Mattueof, sent to demand redress, and this in the peremptory form of a threat of instant war if that redress were not granted. But the Queen's Government most nobly replied that she could not grant the redress demanded, because it involved a violation of the law of the land; and that she could do nothing implicating the rights, though it were of the meanest of her subjects, unless warranted by the law of the land. The Government of England was one of constitution and of laws, not of arbitrary powers. To the same effect, and with still greater reason, does the Government of the United States say, in the present case, that we cannot lawfully, and therefore, even if otherwise disposed, we will not, undertake by arbitrary interference to arrest the constitutional action of the laws in the State of New York. For if Queen Anne was bound by the law of the land, how much more strictly is not the President of the United States restrained within the limits of the Federal Constitution?

But in certain contingencies the Federal Government does contemplate the liberation of McLeod as a thing to happen in the course of law. He may be tried by a jury and found not guilty of participation in the attack on the Caroline. That is one possibility, and the gentleman from Pennsylvania is altogether too quick to decide that question upon his own imperfect knowledge of the facts. Sir Allan McNab, for instance, swears positively that McLeod was not present. Then a jury, though it should find him to have been present in the attack, yet may give him the benefit of his plea in justification, as happened in the great revolutionary case of Preston's trial in Boston. Or the Supreme Court of New York may admit the force of that plea in this preliminary stage of the trial. Or the case may find its way into the Supreme Court of the United States, and thus be decided within this Capitol. Meanwhile, there is another view of this question which seems to have escaped the notice of gentlemen, but which, after all, if regarded for a moment, and compared with the other views of the case, relieves the point of international law from all the confusion and obscurity in which it is now enveloped. The Federal Government looks to the possible event of the liberation of McLeod by some lawful act of its own, in the discharge of its public duty to the whole United States, of whose peace and honor it is the guardian. That contingency presupposes sundry conditions. It presupposes that the attack on the Caroline was either previously commanded or subsequently assumed by the British Government as a national act. It presupposes that that attack, thus commanded or assumed, constitutes an act of war; not, as some gentlemen have superficially contended, that it was war itself; involving the absurdity of the two nations having been from that day to this in a state of war; but that it was, as I have said, an act of war—of insolemn or imperfect war, as the books call it; yet involving national responsibility for the act itself and all its consequences; just as in the case of some isolated act of reprisals or reversion, which our own Government might order. It presupposes that, in such a case, a nation which is aggrieved by the military attack of another nation is not justified by the custom of nations, or by common sense, in seizing upon a private soldier engaged in the attack, and extorting vengeance from his poor person, for

what he did under the orders of his Government; which orders bound him imperatively; in disobeying which he might be held to the penalties of treason, and in obeying which he was the mere instrument of that Government.

Are these premises false in fact or in law? If gentlemen deny them, to do so is to fall inevitably into this conclusion: that the United States have no claim on the English Government for redress, in the matter of the Caroline. If that was a national act, you must look for redress on account of it to national responsibility. If you are of opinion that you have no claim in this matter, as against the British Government, then you may, if you choose, deal with the individuals engaged in it, as such, as fast as you get them into your power. This was the course which England pursued in the case of such of our citizens as she apprehended in arms in Upper Canada; and in doing which she relinquished all right of recourse to us as a nation. And in precisely the same proportion that you magnify McLeod, and make him the object of national pursuit, in the same proportion do you diminish the strength of our cause in the matter of the Caroline. These two cases are situated at the opposite ends of a lever, and as you raise the one you depress the other. And I once again entreat gentlemen, on all sides of the House, not to be misled in this way, to the prejudice of the public honor and the sacrifice of the rights of the United States.

There is one set of supposable facts, and but one, to which the views of the Opposition, and the legal authorities on which they rely, are applicable. They cite a passage from Vattel, which seems at first blush to countenance their views, and to contradict those of the Secretary. In the citation of this passage, they wrest it from the context, and thus fall into an erroneous construction of its meaning. And they read it in a translation which in this place, as my friend from Michigan (Mr. HOWARD) was good enough to suggest to me, does not truly represent the import of the original, which original unequivocally sustains the views of the Secretary. For it applies not to the case of an act performed by a soldier in obedience to the orders of his superior officer, and the command of his Government, but to some act of individual responsibility in its own nature. It may be, for instance, that McLeod, if he killed Durfee, did so from private malice, and if so, he is clearly responsible to the laws of New York for the act; and if he did so, I cannot but think that the English Government, instead of undertaking to protect him, would be glad to see him punished, and the rather if he should have sought to effect purposes of private malice under the cover of simulated obedience to the orders of his Government. It may be that those orders did not cover this fact.

The gentleman from Pennsylvania is too hasty in jumping at conclusions before the premises are ascertained. It does not follow, as he argues, that if the Supreme Court of New York should decide to remand McLeod for trial, that decision would of necessity involve the Federal Government in any dilemma. It may be that a full trial at bar would prove to be necessary in order to ascertain whether in point of fact this be a case of individual or national responsibility. I do not say it is so, but I suggest it as what may be, and as presenting a contingency concerning which the United States have not pronounced.

I will not detain the House with any further discussion of these questions. This only I add in conclusion, that if all or either of the points in controversy between us and Great Britain should end in war, I count with implicit confidence upon the patriotism of the Government in all its parts, of both Houses of Congress, and every member of it, and on that of the whole People of the United States, to unite in carrying us triumphantly through it, to rally as one man under the broad banner of the Union, and never to yield until the entire continent is redeemed from foreign power and foreign influence, and Republican Government shall be made to become the common blessing of the whole of North America, from the Gulf of Mexico to the furthest shores of the Arctic Sea.

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